

STATE OF MICHIGAN  
COURT OF APPEALS

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PAMELA PETERSON and WES PETERSON,

Plaintiffs-Appellants,

V

DAVID WILKINS and ANN WILKINS,

Defendants-Appellees.

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UNPUBLISHED

October 5, 2001

No. 221951

Oakland Circuit Court

LC No. 98-009356-NO

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this negligence action. We affirm.

We review the circuit court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998).

A plaintiff must prove four elements in order to establish a prima facie case of negligence: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

We find that the trial court properly determined that plaintiffs failed to come forward with sufficient evidence to avoid summary disposition. The extension ladder that defendant David Wilkins (defendant) provided to plaintiff Pamela Peterson (plaintiff) is "an essentially uncomplicated instrument" which only presents a danger if it is positioned incorrectly and susceptible to sliding; absent some other negligence, defendants cannot be liable for providing it to plaintiff for her use. *Muscat v Khalil*, 150 Mich App 114, 122; 388 NW2d 267 (1986).

The other negligence alleged here by plaintiffs is that defendant placed the extension ladder on a drop cloth covering a tile floor and thus created an unreasonable risk of harm. However, even assuming in plaintiffs' favor the factual dispute regarding whether a drop cloth was covering the floor and that plaintiff had no responsibility to herself assure a sufficient foundation for the ladder in doing her work, plaintiff presented insufficient evidence to show proximate causation. At her deposition, plaintiff admitted that there was no slippage of the

ladder in the initial position where defendant placed it and that she had moved the ladder prior to the accident. The accident could well have occurred because plaintiff placed the ladder at an inappropriate angle.

At her deposition, plaintiff offered her “guess” that “it could have been the tarp” that caused the ladder to slip. Although the lower court record indicates that plaintiffs had named a liability expert on their witness list, in response to the motion for summary disposition they offered no evidence that a tarp would have caused a more slippery surface or otherwise contributed to the accident. See MCR 2.116(G)(4). Thus, plaintiffs presented nothing more than their conjecture about why the ladder slipped, leaving the fact finder to guess between the available explanations. *Skinner v Square D Co*, 445 Mich 153, 165-167; 516 NW2d 475 (1994). Because plaintiffs failed to present evidence sufficient for the factfinder to determine that defendants’ alleged negligence caused the accident here, the motion for summary disposition was properly granted. See *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

We affirm.

/s/ Richard A. Bandstra

/s/ Jeffrey G. Collins